

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 69-006-17-1-5-01099-18
Petitioner: Kelly Jean Caccamo
Respondent: Ripley County Assessor
Parcel: 69-10-18-400-011.000-006
Assessment Year: 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Kelly Jean Caccamo contested the 2017 assessment of her property located at 4610 West Fairground Road, Osgood, Indiana. The Ripley County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determination valuing the property as follows:

Year	Land	Improvements	Total
2017	\$30,600	\$231,200	\$261,800

2. Caccamo filed a timely Form 131 petition, and elected to proceed under the Board’s small claims procedures. On April 11, 2019, David Smith, our designated Administrative Law Judge (“ALJ”), held a hearing on Caccamo’s petition. Neither he nor the Board inspected the subject property.
3. Shawna Bushhorn, the Ripley County Assessor, appeared and was represented by John Ertel, Ripley County Attorney. Kelly Jean Caccamo, the Petitioner, appeared *pro se*. Bushhorn, Caccamo, Clint Nuhring, and Jim Davis were sworn and testified under oath.

RECORD

4. The official record includes the following:

Petitioner’s Exhibit 1:	Appraisal Report prepared by Michael T. Woolum,
Petitioner’s Exhibit 2:	Attachment to Form 131.
Respondent’s Exhibit 1:	Form 115 issued August 20, 2018,
Respondent’s Exhibit 2:	Appraisal Report prepared by Clint Nuhring,
Respondent’s Exhibit 3:	Property Record Card (“PRC”) for subject property.

5. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) a digital recording of the hearing.

OBJECTIONS

6. The Assessor objected to Petitioner's Ex. 1, the Woolum appraisal, on several grounds. She first argued that the appraisal was hearsay. But Ind. Code § 6-1.1-15-4(p) provides a specific hearsay exception for appraisals. Thus, this objection is overruled. The Assessor also argued that the appraisal should not be admitted because the appraiser was not available to give testimony, there was no evidence that Caccamo had permission to use the appraisal, and that the appraisal was not estimating the market value-in-use. The Assessor did not show how any of these factors render the appraisal inadmissible under any evidentiary rule. We find they go to the weight of the evidence rather than its admissibility and admit Petitioner's Ex. 1 into evidence.
7. Caccamo objected to Respondent's Ex. 2, Nuhring's appraisal, arguing that Nuhring had a conflict of interest because he was a member of the PTABOA that heard this appeal. She also argued that as a member of the PTABOA he was privy to additional information about the subject property. We do not find that any additional information Nuhring may have had affects the admissibility of his appraisal report. Nevertheless, we do find this situation troubling. The PTABOA is intended to be a neutral arbiter between taxpayers and the county assessor. A PTABOA member subsequently working for the assessor in an appeal to the Board undercuts this neutrality and gives the appearance of impropriety. In addition, we are skeptical that an appraiser could remain entirely independent when appraising a property for which they have already concluded to a value as a member of the PTABOA. But these concerns do not render the appraisal inadmissible under the rules of evidence. Thus, we overrule the objection and admit Respondent's Ex. 2 into evidence.

SUMMARY OF CONTENTIONS

8. **Assessor's case:**
 - a. Clint Nuhring, a licensed residential appraiser, appraised the subject property for the Assessor. Nuhring's appraisal report shows a "Current" effective date of value of October 10, 2018. Nuhring stated that he should have checked the box indicating it was a retrospective date of value. He did not specify what particular retrospective date the appraisal was effective for, though he testified that his sales centered around the January 1, 2017 assessment date. Nuhring certified that the appraisal complied with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Nuhring testimony; Resp. Ex. 2.*
 - b. Nuhring performed a sales comparison analysis using three sales comparables from the area around Osgood. He adjusted the sales for several factors, including condition, lot size, structure size, and the presence or lack of an additional building. Based on these sales, he arrived at a value of \$230,000. He also testified that the

“accessory building” had a contributory value of \$65,000.¹ *Nuhring testimony; Resp. Ex. 2 at 5-6.*

- c. Jim Davis, a consultant for the Assessor, testified generally regarding the difference between mass appraisal and individual appraisal. *Davis testimony.*

9. **Caccamo’s case:**

- a. Caccamo made a number of arguments regarding the accessory building on the subject property. In particular she argued that Nuhring’s contributory value estimate of \$65,000 showed that the \$128,000 value on the PRC was excessive. She also testified that the porch area should be classified as a “lean-to.” *Caccamo testimony; Pet’r Ex. 2.*
- b. Caccamo also submitted the Woolum appraisal. Woolum valued the property as of June 14, 2018 using the sales comparison approach. He used three comparable properties that sold between March 31, 2017 and February 28, 2018. He adjusted the sales for a number of factors including heating/cooling, garage/carport, porch/patio/deck, and outbuildings. He ultimately settled on a value of \$168,000 for the subject property. *Caccamo testimony; Pet’r Ex. 1.*

BURDEN OF PROOF

10. Generally a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year’s assessment for the same property, or (2) the taxpayer successfully appealed the prior year’s assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year’s level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
11. The subject property’s 2016 assessment was \$162,900. In 2017, the assessment increased by more than 5% to \$231,800. The Assessor conceded she had the burden of proof, although she commented that the increase in the assessment was due to the addition of a structure. The record is inconclusive as to whether construction had begun on the new building as of the assessment date, although it does show that it was not complete as of June 11, 2018. Thus, we accept the Assessor’s concession that she has the burden of proof.

¹ The property record card shows that the accessory building was 75% complete as of June 11, 2018, and 100% complete as of September 19, 2018. *Resp’t Ex. 3.*

ANALYSIS

12. Indiana assesses real property based on its true tax value, which the Indiana Department of Local Government Finance (“DLGF”) has defined as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Parties may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer actual construction costs, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *Id.*; see also I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments in property-tax appeals). January 1, 2017 is the relevant assessment date for this appeal. I.C. § 6-1.1-2-1.5.
13. The Assessor offered the Nuhring appraisal. Nuhring is a licensed residential appraiser and he certified that his appraisal complied with USPAP. Although Nuhring’s appraisal report states an effective date of October 18, 2018, he testified that this was an error and that he actually performed a retrospective valuation. Even were we to find that he used the correct date of valuation, Nuhring’s appraisal is still unreliable.
14. Nuhring’s appraisal report and testimony both indicate that he valued the accessory building for its condition as of his inspection in late 2018. But the evidence shows that this building was only completed shortly before that inspection. The property record card offered by the Assessor shows that it was 75% complete on June 11, 2018 and 100% complete as of September 19, 2018. There is no evidence to show what the construction status was as of January 1, 2017. Nor is there any indication that Nuhring attempted to discover this or account for it in his appraisal. Because Nuhring failed to appraise the property in its condition on the assessment date, we are unable to rely on his appraisal. We note that the Woolum appraisal is likewise unreliable because Woolum valued the property as of June 14, 2018.
15. Because the Assessor had the burden of proof and failed support the assessment with reliable evidence, the assessment must revert to the prior year’s value of \$162,900.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the 2017 assessment changed to \$162,900.

ISSUED: July 9, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.